In the

Supreme Court of the United States

OCTOBER TERM, 1974

JOHN L. HILL, Attorney General of Texas,
Appellant,

vs.

MICHAEL L. STONE, et al,
Appellees.

On Appeal From The United States District Court
For The Northern District Of Texas

BRIEF OF CITY OF PHOENIX, ARIZONA, AND CERTAIN BOND COUNSEL, AMICI CURIAE, RELATING TO BOND ELECTIONS HELD AND TO BE HELD IN STATES AFFECTED BY THE DECISIONS OF THIS COURT IN CIPRIANO V. CITY OF HOUMA AND CITY OF PHOENIX V. KOLODZIEJSKI

JOE R. PURCELL, *City Attorney*
251 West Washington Street
Phoenix, Arizona 85003
Authorized law officer of the City of Phoenix

MANLY W. MUMFORD
CHAPMAN and CUTLER
111 West Monroe Street
Chicago, Illinois 60603

FRED H. ROSENFELD
GUST, ROSENFELD, DIVELBESS & HENDERSON
3300 Valley Center
201 North Central Avenue
Phoenix, Arizona 85073

HAROLD B. JUDELL
FOLEY JUDELL BECK BEWLEY & LANDWEHR
Suite 2131
225 Baronne Street
New Orleans, Louisiana 70112

FRANK L. WATSON
FREEMAN, RICHARDSON, WATSON, SLADE, McCARTHY & KELLY
Barnett Bank Building
112 West Adams Street
Jacksonville, Florida 32202

ROBERT M. JOHNSON
DAWSON, NAGEL, SHERMAN & HOWARD
First National Bank Bldg.
621 17th Street
Denver, Colorado 80202

ROSWELL C. DIKEMAN
SYKES, GALLOWAY & DIKEMAN
120 Broadway
New York, New York 10005

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No. 73-1723

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INTEREST OF AMICI CURIAE

Amici Curiae comprise (i) the City of Phoenix, Maricopa County, Arizona, a political subdivision of said state, and (ii) certain lawyers and laws firms specializing as "bond

counsel" in the drafting of state laws, the preparation of proceedings, and the rendition of approving opinions relating to state and local government bonds and other instruments of obligation.

Without arguing for a decision on the merits of the case, Amici Curiae urge, if the Court decides to reverse the decision of the court below and to declare that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution permits a state to require a two-ballot election for the issuance of bonds of its political subdivisions (one set of ballots being voted by taxpayers only and the other by all qualified electors), that the Court make such decision prospective only so as not to cast doubt on bonds heretofore issued and bond elections heretofore held in states other than Texas.

The undersigned City of Phoenix, having been enjoined from issuing $173,000,000 bonds (including both revenue bonds and general obligation bonds) voted by real property taxpayers at an election held in said city on June 10, 1969, by decision of the Federal District Court for the District of Arizona, which was affirmed by the Supreme Court of the United States in *City of Phoenix* v. *Kolodziejski*, 399 U.S. 204, 23 L.Ed. 2d 523, 90 S.Ct. 1990, has subsequently held elections for the issuance of $177,400,000 various issues of general obligation bonds and revenue bonds on August 16, 1970 and $56,500,000 general obligation bonds on May 8, 1973. Some, but not all of the bonds voted in 1970 and 1973, have been issued and purchased in good faith by members of the investing public. Both of said elections of 1970 and 1973 were open to all qualified electors regardless of whether they paid a real property tax or not despite the

express language of Article 7, Section 13 of the Arizona Constitution, which purports to limit to real property taxpayers the right to vote in bond elections. Each of the undersigned bond counsel regularly approves bonds issued by political subdivisions in one or more of the states whose laws are discussed below. By long established custom and practice, approving opinions of bond counsel regarding the validity and enforceability of bonds are required in the public market to assure acceptance of such bonds by underwriters and investors. Because of their special experience and knowledge in state and local government financing, the undersigned bond counsel present their views to this court as amici curiae on an aspect of the instant case which is within their special competence. This brief is filed under Rule 42(4) of the Revised Rules of the Supreme Court.

ARGUMENT

It is not the purpose of this brief to take a position upon the merits of the controversy but rather to acquaint the court with the practices being followed by states other than Texas in response to the decisions of this Court in *Cipriano* v. *City of Houma,* 395 U.S. 701, 23 L.Ed. 2d 647, 89 S.Ct. 1897, and *City of Phoenix* v. *Kolodziejski,* 399 U.S. 204, 23 L.Ed. 2d 523, 90 S.Ct. 1990 (June 23, 1970), and with the possibility that a reversal of the court below, absent proper precautionary language, might cast serious doubt upon the validity of billions of dollars worth of outstanding bonds of political subdivisions (including Phoenix) voted and issued by political subdivisions and purchased by investors in good faith reliance upon local interpretations of the *Cipriano* and *Phoenix* decisions, and might make it impossible for Phoenix to sell the heretofore unsold portions of the bonds voted by its residents in 1970 and 1973.

At the time of the *Cipriano* decision, (holding that a state cannot constitutionally restrict to taxpayers the right to vote in revenue bond elections) and at the time of the *Phoenix* decision (holding that a state cannot restrict to taxpayers the right to vote in general obligation bond elections), fourteen states had constitutional or statutory requirements that did so restrict such voting in some or all bond elections. In addition, Wyoming and Nevada had "two-ballot" voting procedures under which a bond issue, to be successfully voted, must carry both by vote of the qualified non-taxpaying voters and by vote of the voters who were taxpayers. Wyoming Statutes Sections 22-130 *et seq.,* Nevada Revised Stat-

utes Sections 350.050 and 350.070. The word "taxpayers" is used herein generically although in some states the favored group were property owners or people required to render property for taxation regardless of whether taxes were paid.

In all of those sixteen states, other than Texas, bond elections are now open to all qualified voters, with no special additional election for taxpayers, except as permitted by this Court in the case of certain districts whose existence is purely for the improvement of land. *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District,* 410 U.S. 719, 35 L.Ed. 2d 659, 93 S.Ct. 1224; *Associated Enterprises Inc.* v. *Toltec Watershed Improvement District,* 410 U.S. 743, 35 L.Ed. 2d 675, 93 S.Ct. 1237. In some of these states the change in procedure has been established by virtue of state supreme court decisions alone, in others by legislative acts, sometimes coupled with state supreme court decisions, in others by virtue of the adoption of new constitutions and in yet others by the determination of the issuer, upon advice of counsel, that the rule of the *Cipriano* and *Phoenix* decisions was so clear that no further authority was needed to let all qualified voters vote regardless of their status as taxpayers. In most instances the changes in procedure were accomplished in the face of state constitutional or statutory law which would have been violated if valid. If, by reversing the court below, this Court should establish a precedent to the effect that a two-ballot election satisfies the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, such decision might amount to overruling the determinations by the various state supreme courts and local bond counsel; this Court has held that a state courts' interpretation of state law under compulsion of overriding federal law erroneously

understood is not binding precedent. *Tipton* v. *Atchison, Topeka & Santa Fe Railway Co.*, 298 U.S. 141, 80 L.Ed. 1091, 56 S.Ct. 715, 104 A.L.R. 831; *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U.S. 109, 68 L.Ed. 582, 44 S.Ct. 274; 36 C.J.S. 401, Federal Courts §171. Upon such an overruling the court of last resort in each state wherein the taxpayer requirement is still on the books might feel constrained to hold that its state constitution or statute retains enough effect under *Cipriano* and *Phoenix* to require a taxpayers' election if a "free for all" election is also held on the same question. See the decision of the Supreme Court of Wyoming in *State ex rel Voiles* v. *Johnson County High School*, 43 Wyoming 494, 5 P.2d 255, holding that although state constitutional provisions requiring all elections to be open, free and equal and also requiring a vote by the people to approve bonds meant an election at which all qualified electors could vote, there was no objection to the legislature's adding an additional restriction on the issuance of municipal bonds. Such restriction was that the ballots of taxpayers and non-taxpayers be counted separately and that a majority of each class must favor the bonds before they could be issued. A similar result was reached by the Nevada Supreme Court in *Hard* v. *Depaoli*, 56 Nev. 19, 41 P.2d 1054.

If the Supreme Court of a state should conclude that a two-ballot election is required to comply with both state law and the Equal Protection Clause, it would be difficult for that court to conclude that bonds voted only in a "free for all" election were legally voted. As the amount of bonds voted and issued in such states since the *Phoenix* decision has aggregated billions of dollars, and most of those bonds are still outstanding, amici curiae consider it important that no doubt of their validity be raised as an unintended result of the decision of this Court in the instant case.

For this reason, the undersigned bond counsel amici curiae, each of whom has approved a substantial amount of bonds voted and issued in accordance with local interpretations of the *Cipriano* and *Phoenix* decisions that only an election at which all qualified electors may vote is constitutional, respectfully request that the Court consider making prospective only, as to states other than Texas, any determination that a two-ballot election satisfies the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The undersigned City of Phoenix respectfully requests that the Court consider making such prospective application to apply only to elections hereafter called and held, so that it may proceed to issue the bonds heretofore voted in 1971 and 1973 without the necessity of calling another election, as well as making said determination prospective as to bonds heretofore issued. A basis for such determination of prospectivity can be found in both the *Cipriano* and *Phoenix* cases wherein this court held that bonds previously voted by taxpayers only under laws theretofore in effect would not be affected by the decisions in those cases. Of course, if this Court should determine to affirm the decision of the court below, no such prospective feature need be included in the courts' determination, insofar as bonds of political subdivisions in states other than Texas are concerned.

To establish the reactions of the various states other than Texas to the decisions of this Court in the *Cipriano* and *Phoenix* cases, the following paragraphs show, state by state, the practice followed by each of the states which previously had taxpayer requirements to vote in bond elections, together with citations to pertinent sources of state law:

ALASKA

At the time of the *Phoenix* decision, Alaska Statutes Section 07.30.010(d) (Supp. (1969)) provided that a home rule city's charter could restrict to taxpayers the right to vote in bond elections. The law governing such elections has been revised and moved to another portion of the Statutes by Section 2 of Chapter 118 S.L.A. 1972; the resulting Section 29.28.030, governing the qualifications for voters in municipal elections, does not permit any municipality to restrict the right to vote in bond elections to taxpayers.

ARIZONA

School District No. 26 (Bouse Elementary) of Yuma County v. *Strohm,* 106 Arizona 7, 469 P.2d 826, involved an issue of bonds of a school district which were approved by vote of both taxpayers and qualified electors generally at a two-ballot election held on August 5, 1969, less than two months following the decision of the United States Supreme Court in the *Cipriano* case. The trial court denied a petition for a writ of mandamus to compel the Board of Supervisors of the County to issue the bonds as requested by the School District on the grounds (1) that the taxpayers' election violated the Fourteenth Amendment to the United States Constitution and (2) there was no authority under Arizona law authorizing a free-for-all election on school bonds. Pending the appeal of that case the Arizona Legislature adopted Chapter 55, Laws of Arizona, 1970 as emergency legislation which took effect April 21, 1970. This law authorized, among other things, a School District to hold simultaneous elections for bond issues, submitting such issues to taxpayers and to all qualified voters respectively. The law also provided that elections held after the date of the *Cipriano* decision which would have been valid under the

Cipriano decision shall be deemed valid for the purpose of authorizing such bonds. The Arizona Supreme Court on May 27, 1970 (before the June 23, 1970 decision of this Court in the *Phoenix* case) thereupon reversed the decision of the trial court holding: "If the election at which only real property taxpayers were permitted to vote does not violate the Fourteenth Amendment to the Federal Constitution, then the election is legal and valid, but if the election is void as unconstitutional under the Fourteenth Amendment, then the election at which all qualified electors of the school district voted is a legal election, having been retrospectively validated and ratified by the Arizona Legislature. . . . One or the other of the elections is valid, and it is immaterial which, for a lawful proceeding antedates the issuance of the bonds."

Subsequently, on June 23, 1970 the United States Supreme Court decided the *Phoenix* case holding unconstitutional the bond election of June 10, 1969 mentioned above. Since the decision of the United States Supreme Court in the *Phoenix* case, both general obligation bonds and revenue bonds have been issued pursuant to elections at which all qualified electors have been permitted to vote with no separate taxpayers' election. Pursuant to Chapter 37, Laws of Arizona, 1971, the Arizona Legislature amended various laws governing the holding of bond elections to change the designation of who may vote from "qualified real property taxpayers" to "qualified electors." The pertinent section of the Arizona Constitution (Article VII, Section 13) still contains the phrase "vote of the real property taxpayers, who shall also in all respects be qualified electors. . ." Chapter 37, Laws of Arizona, 1971, also repealed those portions of Chapter 55, Laws of Arizona, 1970, which permitted two-ballot elections on bonds of school districts and counties and municipalities.

Thus, there is now no authority under which a two-ballot bond election can be held in Arizona to determine the issuance of bonds of such political subdivisions. The 1974 Session of the Arizona Legislature, by S.C.R. 1003, First Special Session, proposed an amendment to Article VII, Section 13 of the Arizona Constitution which would have prescribed a minimum number of electors who must vote at bond elections and would have eliminated the language appearing in that section which, before the *Phoenix* case, restricted to real property taxpayers the right to vote in bond elections. Said amendment failed of ratification at the November 5, 1974 general election.

COLORADO

Article XI, Section 6 of the State Constitution dealing with counties, Section 7 dealing with school districts, and Section 8 dealing with cities and towns prohibited the incurring of debt by loan without favorable vote at a taxpayers' election, with some exceptions. By amendment ratified November 3, 1970, effective January 1, 1972, Section 6 of said Article governed all political subdivisions of the state except home rule cities and towns and prohibited debt "unless the question of incurring the same be submitted to and approved by a majority of the qualified taxpaying electors voting thereon, as the term 'qualified taxpaying elector' shall be defined by statute." On August 31, 1970 the Colorado Supreme Court held that the *Phoenix* case eliminated the taxpayer requirement from a statute prescribing the requirement for voting on a proposition to increase taxes in *Pike* v. *School District No. 11 in El Paso County, Colorado,* 474 P.2d 162. Subsequently all qualified electors who comply with pertinent registration laws have been permitted to vote at such bond elections without distinction between taxpayers and others.

FLORIDA

The Florida Constitution, Article VII, Section 12, provides that counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds payable from ad valorem taxes (other than refunding bonds) "only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation." On March 24, 1971 in *State* v. *City of Miami Beach,* 245 S.2d 863, the Florida Supreme Court affirmed a trial court judgment declaring valid two bond issues of the City of Miami Beach which were voted at two-ballot elections, even though there was no authority at the time for submitting such an election to a vote of all qualified electors and even despite the unfavorable freeholders' vote on one of the propositions at the election, which was held prior to the decision of the United States Supreme Court in the *Phoenix* case. "The question is settled by *Phoenix* and related U.S. Supreme Court cases and we are accordingly mandated to approve the vote by all qualified electors and the ensuing City Resolutions thereon." *State* v. *City of Miami,* 260 S.2d 497 (Florida Supreme Court, March 29, 1972) affirmed a lower court judgment declaring valid certain bonds which were voted at a special bond election held June 30, 1970 whereat the propositions to issue the bonds were submitted at one election to freeholders only and at an additional election to all qualified electors pursuant to Chapter 70-18, Laws of Florida, approved May 12, 1970. The statute provided that a city would have power to issue the bonds "if the issuance of such bonds shall have been approved by vote in a bond election of a majority of the qualified electors of, together with a majority of the qualified freeholder electors of, such governmental taxing unit voting thereon." In the freeholder election both bond

propositions failed, but overall they carried. The court declared: "It is clear that under the *Phoenix* decision, *supra,* general obligation bond elections can no longer be limited to freeholders. Florida Statutes, Chapter 70-18, permitting a majority of the freeholders voting to veto a majority vote of all electors, in effect permit issuance of ad valorem bonds only when approved by freeholder vote and is unconstitutional." This interpretation of the effect of the *Phoenix* case on a Florida constitutional provision requiring that only freeholders vote in an election to increase ad valorem taxes was recognized by the United States Court of Appeals, Fifth Circuit, in *Tornillo* v. *Dade County School Board,* 458 Fed. 2d 194 (March 31, 1972).

IDAHO

Idaho Code Sections 31-1905 and 31-3502 governing county bond elections, 33-404 governing school district bond elections, Sections 39-1339 and 39-1342 governing hospital district bond elections, Section 42-3222 governing water and sewer district bond elections, Section 50-1026 governing city bond elections and Section 70-1716 governing port district bond elections all contained property taxpayer requirements until removed by Chapter 25, Laws of Idaho, 1971, approved and effective February 16, 1971. On January 25, 1971 the Supreme Court of Idaho in *Muench* v. *Paine,* 94 Idaho 12, 480 P.2d 196, held that its previous decision on January 16, 1970 in the same case upholding the taxpayer qualification to vote in bond elections (*Muench* v. *Paine,* 93 Idaho 473, 463 P.2d 939) would not be amended nor the judgment recalled in view of the prospective effect of the *Phoenix* decision five months later, but nevertheless stated that "general obligation bonding election statutes of this state which limit the franchise to real property owners must be con-

sidered as invalid under the pronouncement of the United States Supreme Court in *Phoenix* v. *Kolodziejski, supra.*" Subsequently all qualified electors who comply with pertinent registration laws have been permitted to vote at such bond elections without distinction between taxpayers and others.

LOUISIANA

The Louisiana Constitution of 1921, Article XIV, Section 14(a) permitted general obligation bonds of political subdivisions to be issued only "when authorized by vote of a majority in number and amount of the property taxpayers qualified to vote. . ." This provision has been superseded by Article VI, Part II, Section 33 of the Constitution of the State of Louisiana of 1974, effective January 1, 1975, declaring that such bonds may be issued "only after authorization by a majority of the electors voting on the proposition. . ." In 1970 the Louisiana Legislature adopted Act Number 277, effective July 13 of that year, declaring that if the provisions of the Louisiana Constitution or laws which limit to taxpayers the right to vote are held void by the U.S. Supreme Court, then all qualified electors may vote in bond elections. On February 25, 1970, a three-judge federal district court in New Orleans held that the taxpayer requirement of the Louisiana Constitution was void and that the general election laws should cover bond elections and all qualified electors should be permitted to vote regardless of the amount of their property. *Stewart* v. *Parish School Board of St. Charles Parish*, 310 F. Supp. 1172. This decision was affirmed by the United States Supreme Court on November 9, 1970, citing *Phoenix*, at 400 U.S. 884, 27 L.Ed. 2d 129, 91 S.Ct. 136. Subsequently all qualified electors who comply with pertinent registration laws have been permitted to vote at such bond elections without dis-

tinction between taxpayers and others. In *Hebert* v. *Police Jury of Vermilion Parish*, 258 La. 41, 245 S.2d 349, the Louisiana Supreme Court held that the *Phoenix* case did not apply to an election on bonds of a road district on the grounds that the road district was established primarily for the benefit of nearby land. Citing the *Cipriano*, *Phoenix* and *Stewart* cases, the United States Supreme Court reversed such decision on October 12, 1971 in *Police Jury of Parish of Vermilion* v. *Hebert*, 404 U.S. 807, 30 L. Ed. 2d 39, 92 S. Ct. 52.

MICHIGAN

Michigan Constitution of 1963, Article II, Section 6, provides that "only electors in, and who have property assessed for any ad valorem taxes in" the district or territory affected, or their husbands or wives, may vote in bond elections. This provision has not been amended nor has the Michigan Supreme Court decided any case interpreting the effect of the *Cipriano* and *Phoenix* cases thereon. Bonds are generally voted by all qualified electors in Michigan political subdivisions on the theory that the *Cipriano* and *Phoenix* cases, as well as the decisions of courts in other states, clearly have the effect of excising the property taxpayer requirement.

MONTANA

The Montana Constitution of 1889, Article IX, Section 2 provided that if a question submitted at an election concerned the creation of any debt or liability a person, to vote, "must also be a taxpayer whose name appears on the last preceding completed assessment roll. . ." In *State ex rel Ward* v. *Anderson*, 158 Mont. 279, 491 P.2d 868, decided November 23, 1971, the Montana Supreme Court recognized that the *Phoenix* and *Cipriano* cases had the

effect of excising the taxpayer requirement. "These decisions make it clear that that portion of Article IX, Section 2, of the Montana Constitution, quoted above, is invalid. The Montana Legislature recognized this by enacting Chapter 234, Laws of 1971, which allows all qualified electors to vote on local bond issues, and by voting to submit a proposed amendment to Article IX, Section 2, which will, if approved by the voters, delete the invalid requirement. Chapter 159, Laws of 1971." Subsequently all qualified electors who comply with pertinent registration laws have been permitted to vote at such bond elections without distinction between taxpayers and others. The amendment proposed by Chapter 159 of the Laws of 1971 was rejected at the general election in November, 1972, after the people of Montana ratified a new Constitution on June 6, 1972, effective July 1, 1973, which contains no provision limiting the right to vote in bond elections to taxpayers.

NEVADA

Nevada Revised Statutes Sections 350.050 and 350.070, at the time of the *Phoenix* case, provided for a two-ballot election; one set of ballots, printed on colored paper, were supplied to the qualified voters who were owners or spouses of owners of real property and the other set, printed on white paper, were supplied to all other qualified electors. The election was required to carry on each set of ballots before the bonds could be issued. The law was amended pursuant to Chapter 49, Statutes of Nevada, 1971, pages 91 *et seq.*, to eliminate all requirements for separate ballots and ballot boxes. Subsequently all qualified electors who comply with pertinent registration laws have been permitted to vote at such bond elections without distinction between taxpayers and others.

NEW MEXICO

New Mexico Constitution, Article IX, Section 10, restricts voters in county bond elections to those "who paid a property tax therein during the preceding year;" Section 11 of the same Article restricts the right to vote in school bond elections to "owners of real estate within the school district" and Section 12 of the same Article restricts the right to vote on city, town or village bonds to those who "have paid a property tax therein during the preceding year." These provisions have not been amended; on December 7, 1970 the Supreme Court of New Mexico in *Board of Education of the Village of Cimarron* v. *Maloney*, 82 N.M. 167, 477 P.2d 605, held that the effect of the *Phoenix* case was to excise the property ownership requirement from Section 11 and bonds have generally been issued since then under Sections 10 and 12 as well pursuant to vote of all qualified electors.

NEW YORK

The New York Town Law, Section 84, prohibits anyone from voting upon a proposition for the spending of money or the incurring of any town liability unless he or she is an owner of property "assessed upon the last preceding town assessment roll." A similar provision previously appeared in Section 4-402 of the Village Law but has been omitted by the recodification of the Village Law pursuant to Laws, 1972, Chapters 887 to 895, inclusive. On August 28, 1972 *In re Cohalan*, 1972, 71 Misc. 2d 196, 335 N.Y.S. 2d 747, affirmed 41 A.D. 2d 840, 342 N.Y.S. 2d 153, held that the Town Law restriction was unconstitutional in a proceeding to declare invalid a petition for a referendum on a proposed acquisition of real estate by the Town of Islip. Enough of the signers of the petition were non-property owners so that without their signatures the petition would be insufficient, but, citing

Kramer v. *Union Free School District,* 395 U.S. 621, 23 L.Ed. 2d 583, 89 S.Ct. 1886, as well as *Phoenix* and *Cipriano,* the court held that their signatures were valid under Section 91 of the Town Law. Section 91 provides that only those qualified to vote on a proposition to spend money may sign such a petition. Subsequently all qualified electors who comply with pertinent registration laws have been permitted to vote at such elections without distinction between taxpayers and others. This practice has been upheld in *Wright* v. *Town Board of Town of Carlton,* 70 Misc. 2d 1, 332 N.Y.S. 2d 233 affirmed as modified on other grounds 41 A.D. 2d 290, 342 N.Y.S. 2d 577, affirmed 33 N.Y.2d 977, 309 N.E.2d 137 regarding an election on the creation of a water district and in *Light* v. *MacKenzie,* 78 Misc. 2d 315, 356 N.Y.S. 2d 99 respecting a fire district bond issue.

OKLAHOMA

Oklahoma Constitution, Article X, Section 27, provides that a city or town may "by a majority of the qualified property taxpaying voters of such city or town, voting at an election to be held for that purpose," become indebted in excess of the debt limit prescribed by Section 26 of that Article which requires a 3/5ths majority at an election by all qualified voters. This taxpayer qualification was upheld by the Supreme Court of Oklahoma in *Settle* v. *City of Muskogee,* 462 P.2d 642 on December 31, 1969, following the *Cipriano* case; on March 30, 1971 the Oklahoma Supreme Court decided *City of Spencer* v. *Rayburn,* 483 P.2d 735, holding that the effect of the *Phoenix* case was to excise the taxpayer requirement from Section 27. Subsequently all qualified electors who comply with pertinent registration laws have been permitted to vote at such bond elections without distinction between taxpayers and others.

RHODE ISLAND

The Rhode Island Constitution, Amendment Number 29, Section 2, provided that no one might vote upon any proposition to impose a tax for the expenditure of money in a town unless he shall "either (1) be really and truly possessed in his own right of real estate in such town of the value of one hundred thirty-four dollars over and above all encumbrances . . . or (2) shall within the year next preceding have paid a tax assessed upon his personal property in said town of the value of at least one hundred thirty-four dollars." This provision was anulled and superseded by Amendment Number 37 adopted by the people November 6, 1973.

UTAH

Utah Constitution, Article XIV, Section 3, prohibits the incurring of any debt by any county, school district or city "unless the proposition to create such debt shall have been submitted to a vote of such qualified electors as shall have paid a property tax therein in the year preceding such election. . ." In *Cypert* v. *Washington County School District*, 24 Utah 2d 419, 473 P.2d 887, on July 16, 1970 the Utah Supreme Court held that the effect of the *Phoenix* case was to excise the taxpayer requirement from the constitutional election requirement. Subsequently all qualified electors who comply with pertinent registration laws have been permitted to vote at such bond elections without distinction between taxpayers and others.

WYOMING

Wyoming Statutes, Sections 22-130 *et seq.*, at the time of the *Phoenix* case provided that non-property owners receive white ballots and deposit them in a ballot box designated Box "A" and that property owners and their spouses get colored ballots and deposit them in ballot Box "B". The election was required to carry in each ballot box

before the bonds could be issued. Chapter 240, Session Laws of Wyoming, 1971, revised the laws for bond elections generally and required one set of ballots for all qualified electors, printed on white paper, and one ballot box at each polling place. Subsequently all qualified electors who comply with pertinent registration laws have been permitted to vote at such bond elections without distinction between taxpayers and others. This change has been carried forward in a new election code for the State of Wyoming by Chapter 251, Session Laws of Wyoming, 1973.

SUMMARY OF ARGUMENT

In all of the states which, at the time of the *Phoenix* case, restricted to taxpayers the right to vote in bond elections, other than Texas, bonds have been voted and issued in reliance upon local interpretations that *Phoenix* prohibited the states from granting to taxpayers alone a right at an election to reject a bond issue proposed by the local governing body. A reversal of the decision of the court below, if this Court declares that such a right may be granted to taxpayers as a class when coupled with an election at which all qualified electors may vote, might mean that such local interpretations were erroneous and that under state constitutions and laws (prior to amendment or revision in some states) bonds issued after having been voted only at elections open to all qualified electors were issued in violation of those constitutions and laws which could, consistently with the Equal Protection Clause, have been obeyed by the use of a two-ballot election.

CONCLUSION

Any reversal of the court below on the merits should be prospective only as to states other than Texas so that the rule enunciated by such reversal will apply only to bond elections called and held after the date of this Court's decision.

Respectfully submitted,

JOE R. PURCELL, *City Attorney*
251 West Washington Street
Phoenix, Arizona 85003
Authorized law officer of the City of Phoenix

MANLY W. MUMFORD
CHAPMAN and CUTLER
111 West Monroe Street
Chicago, Illinois 60603

FRED H. ROSENFELD
GUST, ROSENFELD, DIVELBESS & HENDERSON
3300 Valley Center
201 North Central Avenue
Phoenix, Arizona 85073

HAROLD B. JUDELL
FOLEY JUDELL BECK BEWLEY & LANDWEHR
Suite 2131
225 Baronne Street
New Orleans, Louisiana 70112

FRANK L. WATSON
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Barnett Bank Building
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Jacksonville, Florida 32202

ROBERT M. JOHNSON
DAWSON, NAGEL, SHERMAN & HOWARD
First National Bank Bldg.
621 17th Street
Denver, Colorado 80202

ROSWELL C. DIKEMAN
SYKES, GALLOWAY & DIKEMAN
120 Broadway
New York, New York 10005

CERTIFICATE

I, the undersigned bond counsel amicus curiae do hereby certify that the foregoing brief has been served on counsel for all parties in this matter by depositing a copy thereof in the United States mail, air mail postage prepaid, addressed to each of them at his respective address this 10th day of January, 1975.

.....

MANLY W. MUMFORD